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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In The Matter of	)	
	)	
Amendment of Part 25 of the	)	
Commission's Rules to Establish	)	**IB Docket No. 96-220**
Rules and Policies Pertaining	)	
to the Second Processing Round of	)	
the Non-Voice, Non-Geostationary	)	
Mobile Satellite Services	)	

To: The Commission

COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

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Date: December 20, 1996

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SUMMARY

API's Comments address the Commission's proposals to allocate additional spectrum to the Non-Voice, Non-Geostationary Mobile Satellite Service ("Little LEOs"). In particular, API strongly objects to the Commission's proposal to permit Little LEOs to operate on the oil spill containment and clean up channel centered at 459.000 MHz. Oil spill clean up operations are emergency activities. Moreover, absent a corresponding downlink, the proposed uplink allocation of the 459.000 MHz band would appear to result in inefficient use of spectrum by Little LEOs. Additionally, API believes that Little LEOs can share existing allocations, so there is no need for additional Little LEO spectrum at this time.

Finally, API points out that the international allocation of the 459.000 MHz band was based upon a seriously flawed engineering analyses; if the Commission nonetheless allocates the 459.000 MHz band on a domestic basis, API urges the Commission to apply the strict standards which exist in the international allocation so that existing users will not be subjected to interference from Little LEOs.

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To: The Commission

COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), hereby respectfully submits these Comments concerning the Notice of Proposed Rule Making ("Notice") released by the Commission on October 29, 1996 in the above-captioned proceeding.[1/]

[1/] Notice of Proposed Rule Making, FCC 96-426 (adopted October 29, 1996); Order Granting Extension of Time, DA No. 96-1989 (adopted November 27, 1996).

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. One of the Telecommunications Committee's primary functions is to evaluate and develop responses to federal and state proposals affecting telecommunications services and facilities used in the oil and gas industries. Consistent with that mission, it also reviews and comments, where permitted, on other proposals that impinge on the ability of the energy industries to meet their telecommunications needs.

2. API members are involved in every aspect of the petroleum and natural gas business, overseeing the recovery, refining and transport of petroleum products and natural gas. These products are transported through pipelines, over rail, highways, sea lanes and inland waterways. In the

event of an emergency at a refinery, drilling site or during transport, the petroleum industry and oil spill clean up contractors rely upon the use of the oil spill response frequency assignments to direct emergency containment and clean up programs. Timely and efficient responses are essential to successful recovery efforts, where delay or confusion can lead to disastrous results and unwarranted additional damage to life, property and the environment.

II. COMMENTS

A. Effective Communications Are Essential to Oil Spill Response and Clean Up Operations

3. The Commission has proposed to allocate a service uplink for Little LEOs in the 459.000-460.000 MHz band ("the 459.000 MHz band"). However, the 459.000 MHz band contains a 25 kHz channel at 459.000 MHz which is allocated to the Petroleum Radio Service and specifically dedicated for communications related to oil spill containment and clean up activities. 47 C.F.R. § 90.65(b). Thus, the ability of the petroleum industry and clean up contractors to properly support oil spill containment and clean up operations would be negatively impacted by adoption of the Commission's proposal.

4. The Commission has generally proposed to permit Little LEO operations in the frequency bands that were allocated for Little LEO service at the World Radiocommunications Conference in 1995 ("WRC-95").[2/] These bands include the 459.000 MHz band, a portion of which is allocated to the Petroleum Radio Service ("PRS").[3/] Surprisingly, however, the Commission's Notice failed to discuss the existing users of the 459.000 MHz band.

5. As noted above, Section 90.65(b) of the FCC's Rules and Regulations dedicates primary use of the 459.000 MHz channel to stations in the PRS for oil spill containment and clean up operations. 47 C.F.R. § 90.65(b). Similarly, Section 90.65(b) of the Commission's Rules and Regulations provides for the secondary use of the 459.000 MHz channel for day-to-day operational activities of PRS eligibles. 47 C.F.R. § 90.65(b). These PRS licensees may operate on the 25 kHz channel only when the channel is

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[2/] Notice at ¶ 78.

[3/] At WRC-95, the 399.900-400.050 MHz uplink band was allocated for Little LEO use worldwide, and the 455.000-456.000 MHz and 459.000-460.000 MHz uplink bands were allocated for use in Region 2.

not required for oil spill containment and clean up operations.[4/] Thus, PRS licensees employing this channel for regular operations are required to clear the frequency immediately in the event of an oil-related emergency. See 47 C.F.R. § 2.106, n.NG 112. In an emergency, even one unauthorized user can wreak havoc. The frequency, therefore, should not be shared.

B. The Commission's Proposal to Reallocate the 459.000 MHz Band to Little LEOs Is Not in the Public Interest

6. The Commission also asked in its Notice "for comment on the overall public interest benefits of authorizing second round [Little LEO] applicants to use the

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[4/] In fact, Section 90.65(c)(6) of the Commission's Rules and Regulations specifically provides that the frequency 459.000 MHz:

> [I]s primarily available for oil spill containment and clean up operations and for training and drills essential in the preparations for the containment and clean up of oil spills. It is secondarily available for general base-mobile operations in the Petroleum Radio Service on a noninterference basis. Secondary users of this frequency are required to forego its use should oil spill containment and clean up activities be present in their area of operation or upon notice by the Commission or a primary user that harmful interference is being caused to oil spill containment or clean up activities in other areas.

47 C.F.R. ¶ 90.65(c)(6).

WRC-95 spectrum . . . ."[5/] API believes that reallocation of the 459.000 MHz band to Little LEOs would *not* be in the public interest.

7. The oil spill containment and clean up operations, as well as the training and drills supported by the 459.000 MHz allocation, are vital to the protection of public safety, the environment, and workers in the petroleum industry. In order for an oil spill response and clean up operation to be effective, activities must be immediately coordinated among onshore operators, ships at sea, aircraft, various government officials, and containment and clean up personnel. Without access to the type of communications available using UHF radios that employ the 459.000 MHz channel, however, such coordination would be nearly impossible.[6/]

8. Moreover, there are three factors which affect the severity of a marine oil spill incident: weather

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[5/] Notice at ¶ 78.

[6/] API submits that, if the FCC allocates the 459.000 MHz band to Little LEOs, the allocation should commence at 459.050 MHz, rather than at 459.000 MHz. This solution would avoid interference with the 25 kHz channel centered at 459.000 MHz that is so critical to the PRS in its communications during oil spill containment and clean up operations.

conditions, tidal direction, and swiftness of response. The only factor which can be altered through human intervention is the rapidity of the response. Effective communications are the key to rapid initiation of oil spill containment and clean up operations. Clearly, the communications capability which is currently provided by use of the oil spill response and clean up channel serves the public interest. API does not believe that reallocation of the spectrum to commercial satellite interests, such as Little LEOs, for their profit-making purposes engenders the same level of public benefits.

C. There Is No Demonstrated Need for Additional Little LEO Spectrum

9. The Commission further requested comment on whether second-round Little LEO applicants should be required to share spectrum which was allocated to Little LEOs in the first processing round, rather than receive new allocations. Notice at ¶ 42. Specifically, the Commission noted that:

> [W]e believe that, with appropriate modulation techniques, proper system coordination, and time-sharing of frequencies, there is sufficient spectrum available to grant a license for at least one, and possibly for up to three new systems in the second processing round.

Notice at ¶ 42.

10. API strongly supports this sharing proposal as an alternative to allocation of the 459.000 MHz band to Little LEOs. Currently, ORBCOMM, Inc. is the only Little LEO licensee from the first processing round that is actually operating and offering service to customers. ORBCOMM's service is, in fact, minimal. In light of the fact that existing spectrum for Little LEOs is so lightly used, and that Little LEOs in the second processing round can share the existing allocations with first round licensees, API believes that it is premature to allocate additional spectrum, particularly the 459.000 MHz band, to Little LEOs.

11. In contrast to the speculative claims made by Little LEO interests concerning their need for spectrum for future use, the petroleum industry relies upon the 459.000 MHz channel today and every day to ensure immediate access for emergency communications. The Commission should require new Little LEOs to share existing allocations.

D. The Absence of a Corresponding Downlink Renders the 459.000 MHz Band Unsuitable for Little LEO Purposes

12. The Commission in its Notice requested comment on whether Little LEOs could utilize the 459.000 MHz band efficiently for an uplink, "particularly since there is no available corresponding downlink spectrum." Notice at ¶ 78. API points out that Little LEOs could not efficiently utilize the 459.000 MHz band without a corresponding downlink allocation. Given the fact that no such downlink allocation was made at WRC-95, API believes that the Commission should not reallocate the 459.000 MHz band as a Little LEO uplink.

13. In discussing the absence of an international allocation for Little LEO downlinks, the FCC noted that the second round of Little LEO applicants were instrumental in seeking the international allocation of the 459.000 MHz band at WRC-95. Notice at ¶ 78. API is concerned that the FCC not be tempted to allocate the 459.000 MHz band to those Little LEO interests that fought for the international allocation simply as a reward for their efforts. API cautions that domestic allocations should not be determined by international allocations in which the needs of domestic licensees, including those responsible for oil spill

containment and clean up response, are not adequately addressed.

14. In particular, the second round Little LEO applicants based their efforts at WRC-95 upon the results of a suspect engineering survey of the domestic, U.S. users of the 459.000 MHz band.[7/] As the attached Exhibits A and B indicate, API on numerous occasions attempted to illuminate the discrepancies in the Little LEOs' proposal. Specifically, API pointed out in its Response to the Joint Comments of the second round Little LEO applicants in IC Docket No. 94-31 that the Little LEO consultants' Engineering Statement failed to adequately recognize that:

> [T]he 459.000 MHz channel exists for oil spill containment and clean up operations . . . . The Engineering Statement only notes that "it is reported" that the entire 459-460 MHz band does not enjoy active use and that scanner monitoring of the entire band during regular business hours in the Washington, D.C. area revealed "very few transmissions within this band during the monitoring period." Based on this scanty, and wholly inadequate assessment, the Engineering Statement concluded that the band experiences only low and intermittent usage levels and thus the entire band, including the 459.000 MHz channel, should be free for [Little LEOs].

API Response at 5 (Exhibit A).

7/ That engineering statement was prepared for Little LEO interests by Cohen, Dippell and Everist, P.C.

15. API points out that all of the operators of the 459.000 MHz channel are located in oil transport and production areas, **not Washington, D.C.** Thus, when the Little LEO consultants researched the traffic loads in the 459.000 MHz band in Washington, D.C. -- without even considering the purpose and uses of the band -- they made a fundamental error which could have far-reaching impact. API urges the Commission not to rely upon their analysis, but to consider the nature of the emergency communications conducted on this critical channel.

16. Because the 459.000 MHz channel is licensed on a secondary basis to PRS licensees for day-to-day operations, *these licensees purposely do not utilize the channel for heavy traffic loads because the main purpose of the channel is to keep it clear for communications directly related to oil spill and containment operations.* In addition, training and drills essential in the preparation for containment and clean up operations do not occur every day; instead they are conducted at regular intervals of several weeks or months.

17. Thus, the analysis of the 459.000 MHz band which was performed for Little LEOs by a third party consultant --

and which formed their basis for requesting the international allocation of the 459.000 MHz band -- did not adequately consider the purpose of the oil spill response and clean up channel. This oversight might simply be trivial were it not for the important ramifications which could occur if the Commission is led to rely upon the errant engineering analysis provided by the Little LEO consultants.

E. If the FCC Nonetheless Reallocates the 459.000 MHz Band, It Should Include Protections Adopted at WRC-95

18. Although WRC-95 allocated the 459.000 MHz band to Little LEOs on a co-primary basis, WRC-95 also provided two important limitations on that international allocation. Specifically, the Final Acts of the World Radiocommunications Conference ("WRC-95 Final Acts") provide that satellite licensees in the 459.000-460.000 MHZ band must:

(1) not constrain the development and use of the fixed and mobile services; and

(2) not cause harmful interference to, or claim protection from, stations of the fixed or mobile service.

See notes S5.286A, S5.286B, WRC-95 Final Acts.

19. Thus, the international allocation for Little LEOs is on a non-interference basis vis-a-vis oil spill containment and clean up communications and other existing licensees. At a bare minimum, API submits that the FCC must include the same limitations if it determines to allow Little LEOs to operate in the 459.000 MHz band. API emphasizes that these protections are not ideal solutions because it would be very difficult to contact Little LEOs in the event of an emergency to instruct them to discontinue operations. Nonetheless, if the Commission does determine to reallocate the 459.000 MHz band, API believes that existing users should retain primacy over Little LEOs.

III. CONCLUSION

20. Oil spill and containment operations can occur practically anywhere and at anytime throughout the nation. These incidents are not limited to coastal areas. They can occur on inland waterways from barges or pipeline ruptures or on land from, for example, tank farms or pipeline leaks. API submits that the public interest would not be served by denying oil spill and containment coverage to the people and property affected by important spill and containment

operations. Thus, the Commission should refrain from allocating the 459.000 MHz band to Little LEOs.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully requests the Federal Communications Commission to take action consistent with the recommendations made herein.

Respectfully submitted,

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Date: December 20, 1996

EXHIBIT A

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Preparation for International Telecommunications Union World Radiocommunication Conferences	)	**IC Docket No. 94-31**
	)	
	)	

RESPONSE TO JOINT SUPPLEMENTAL REPLY COMMENTS

This Response to Joint Supplemental Reply Comments ("Response"), submitted by the undersigned private land mobile radio user organizations and industry trade associations addresses issues raised in the Joint Supplemental Reply Comments ("Joint Comments") filed on May 18, 1995 by pending applicants for new or modified facilities in the Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG").[1/]

1/ The Joint Comments supplement previous comments submitted by the NVNG MSS parties in the above-captioned proceeding concerning the 1995 World Radiocommunication Conference ("WRC-95"), FCC 95-36 (Released: January 31, 1995). The Joint Commentors are: CTA Commercial Systems, Inc.; E-SAT, Inc.; Final Analysis Communication Services, Inc.; GE American Communications, Inc.; LEO ONE USA Corporation; Orbital Communications Corporation; Starsys Global Positioning, Inc.; and Volunteers in Technical Assistance.

I. RESPONSE

1. The undersigned are pleased to observe that in their Joint Supplemental Reply Comments the NVNG MSS proponents essentially abandon consideration of Private Land Mobile Radio Service spectrum for reallocation to NVNG MSS uses. The change in position on allocations by NVNG MSS proponents concedes that land mobile spectrum is heavily utilized and that any sharing with non-geostationary MSS below 1 GHz would cause substantial and harmful interference to the Land Mobile services.[2/]

2. The NVNG MSS proposal, as illustrated in the Joint Supplemental Reply Comments, is as follows:

- Service Downlink: 386-390 MHz
- Service Uplink: 420-422, 455-456 and 459-460 MHz
- Feeder Downlink: 216-216.5 and 217.5-218 MHz
- Feeder Uplink: 450-451 MHz[3/]

[2/] This filing addresses only the Private Land Mobile Service spectrum and should not be construed as a concurrence or endorsement of NVNG MSS proposals for other bands.

[3/] Joint Supplemental Reply Comments at 2-3. This filing addresses only the Private Land Mobile Service spectrum and should not be construed as a concurrence or endorsement of NVNC MSS proposals for other bands.

3. Our concern is that one very critical private land mobile channel remains affected by the NVNG MSS proposal. The service uplink proposal for 459-460 MHz contains a 25 kHz channel at 459.0 MHz, which is allocated to the Petroleum Radio Service and specifically dedicated for communications related to oil spill containment and clean up activities. 47 C.F.R. § 90.65(b). In light of the wide public interest to be served by preserving this channel for interference-free communications, the undersigned strongly recommend that this 25 kHz channel be removed from consideration for NVNG MSS operations.

WHEREFORE, THE PREMISES CONSIDERED, the undersigned respectfully requests the Federal Communications Commission recommend that the United States refrain from seeking a worldwide allocation at WRC-95 for MAS in any land mobile spectrum in accordance with the recommendation made herein.

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE

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Wayne V. Black
Its Attorney

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Dated: June 6, 1995

EXHIBIT B

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Preparation for International Telecommunications Union World Radiocommunication Conferences	)	IC Docket No. 94-31

AMERICAN PETROLEUM INSTITUTE
RESPONSE
TO
JOINT SUPPLEMENTAL REPLY COMMENTS

The American Petroleum Institute ("API"), by its attorneys, hereby respectfully submits this Response to Joint Supplemental Reply Comments ("Response"), to address the Joint Supplemental Reply Comments ("Joint Comments") filed on May 18, 1995 by pending applicants for new or modified facilities in the Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS").[1/] In particular, API strongly objects to the NVNG MSS proposal to operate on the oil spill response channel at 459.000 MHz.[2/]

1/ The Joint Commentors are comprised of: CTA Commercial Systems, Inc.; E-SAT, Inc.; Final Analysis Communication Services, Inc.; GE American Communications, Inc.; LEO ONE USA Corporation; Orbital Communications Corporation; Starsys Global Positioning, Inc.; and Volunteers in Technical Assistance.

2/ This filing addresses only the Private Land Mobile Service spectrum and should not be construed as a concurrence or endorsement of NVNG MSS proposals for other bands.

I. PRELIMINARY STATEMENT

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transport, the petroleum industry relies on the use of its oil spill response frequency assignments to direct containment and cleanup programs. Timely and efficient responses are essential to successful recovery efforts, where delay or confusion can lead to disastrous results and unwarranted additional damage to life, property and the environment.

3. The NVNG MSS Joint Comments supplement previous comments submitted by the NVNG MSS parties in this proceeding concerning the 1995 World Radiocommunication Conference ("WRC-95").[3/] Those previous comments targeted a wide range of Land Mobile Radio Service spectrum allocations. In their Joint Supplemental Reply Comments, the NVNG MSS proponents abdicated consideration of almost all Private Land Mobile Radio Service spectrum for reallocation to NVNG MSS uses. However, one private land mobile channel remains affected by the NVNG MSS proposal. The NVNG MSS service uplink proposal for 459-460 MHz contains a 25 kHz channel at 459.000 MHz, which is allocated to the Petroleum Radio Service and specifically dedicated for communications related to oil spill containment and clean up activities. 47 C.F.R. § 90.65(b).

[3/] FCC 95-36, (Released: January 31, 1995).

II. RESPONSE

A. NVNG MSS Proponents' Engineering Data is Fatally Flawed

4. The Joint Comments state that NVNG MSS uplinks can effectively share with the operations of the Domestic Public Land Mobile Radio Service (DPLM) at 459-460 MHz.[4/] It is further stated that the Engineering Statement accompanying the Joint Comments concludes that sharing of the band is practical.[5/] API disagrees. The Engineering Statement is fatally flawed regarding the 25 kHz channel at 459.000 MHz.

5. API submits that the Engineering Statement neglected to properly analyze the impact of sharing on the 459.000 MHz channel and only analyzed the practicality of sharing with DPLM. Beyond recognizing that the 459.000 MHz channel exists for oil spill containment and clean up operations, the Engineering Statement contains no hard data as to why the proposed NVNG MSS sharing will not disrupt operations on that channel.[6/] The Engineering Statement

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[4/] Joint Comments at 12.

[5/] Joint Comments, Appendix A, Engineering Statement Re Comments in IC Docket No. 94-31 Review and Analysis of Spectrum Between 100-512 MHz for Sharing With NVNG MSS Services, May 1995, Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio and Television, Washington, D.C.

[6/] Id. at 4-5.